IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.1.2007

CORAM:-

THE HONOURABLE MR. JUSTICE J.A.K. SAMPATHKUMAR

A.S. No. 618 of 1990

1.The Commissioner,
H.R. & C.E. Admn. Department,
Madras.34.

2.Assistant Commissioner,
H.R. & C.E. Admn. Department,
Kancheepuram. .. Appellants/Defendants 1 and 2.

Vs.

1. Muthiyalpet Village Balija
Community rep. By
M.P. Radhakrishnan
2. Subramania Naicker
3. Ekambara Naickar
4. Ramaiya chettiar
5. Govindaraja Naicker
6. M. Srinivasan
7. Venugopal
8. Perumal
9. Elumalai
10.V. Srinivasa .. Respondents/Plaintiff and Defendants 3 to 11.

Appeal filed under Section 96 of CPC against the judgment and decree of the learned Subordinate Judge, Kancheepuram, dated 24.8.1989 made in O.S. No.196 of 1980.

For Appellants : Mr. M.R. Murugesan
Govt. Advocate (H.R. & C.E.)

For Respondents : No Appearance

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JUDGMENT

This appeal is against common judgment and decree dated 24.8.1989 in O.S.No. 196 of 1980 along with O.S.No. 26 of 1983 on the file of the Subordinate Court, Kancheepuram, in and by which, the learned Subordinate Judge decreed both the suit as prayed for.

2. The first and second defendants in O.S.No. 196 of 1980 have filed this appeal. O.S.No. 26 of 1983 is between the parties belong to a particular community and no appeal is filed by the aggrieved party in which, the Government is not a party. The present appellants, who are shown as D1 and D.2 were not a party in O.S.No. 26 of 1983. So the merit of the decree in O.S.No. 26 of 1983 need not be gone into in this appeal.

3. The plaintiff in O.S.No. 196 of 1986 states as follows:-

The plaintiff is the elected trustee for the temples situated in Muthialpettai village, Kancheepuram Taluk viz., (i) Sri Prasanna anjaneyar (ii) Prasanna Venkatesaperumal (iii) Sri. Sundaramurthi Vinayagar and Chidambareswara Madam, (iv) Kanni Koil and (v) Ramar Bajanai temple and Pilliayar temples. These temples are situated in Kavarai Street, Mettu Street and Road Street, Muthialpettai Village. These temples are in existence from time immemorial and for the sole benefit of the Balijakula community, who happened to be a permanent residents of Kavarai Street, Muthialpettai Village. These temples were founded by the members of the Balijakula community and always managed by the elected representatives of Balijakula community.

3. There is an earlier stone inscription of the Tamil year Salivagana embedded in Sri Prasanna Venkatesa Perumal Temple indicating that one Guruvappa Chetti and members of the Balijakula community and also ancestor of the plaintiff were responsible for renovating the temple. The members of the Balijakula community also endowed properties for the upkeep and maintenance of the above said institutions. The members of the Balijakula community have endowed 4.46 acres in favour of Sri Prasanna Venkatesa Perumal and Sundaramurthi Vinayagar. Sri Kanni koil one of the temples is also possessed of 0.26 cents which was also endowed by the member of the Balijakula community. As the income from the above properties are meagre for the up keep of the temples, the members of the Balijakula community residing in Kavarai Street used to contribute and out of the collection from such members, the day to day affairs of the temples is being carried on.

4. The second defendant without any manner of right, and without also making any proper enquiry about the character of the temple and purporting to act under the H.R. & C.E. Act has issued a notice to the predecessors of the plaintiff under Section 42 of the H.R. & C.E. Act and by the same intimated the predecessors of the plaintiff about the

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nomination of the trustees to the temples. The said notice was issued by the 2nd defendant in Na.ka. No. 131/1980 and by the such notice being issued, the 2nd defendant tried to interfere with the denominational character of the temples. The said notice is improper and illegal and void and the 2nd defendant has got no jurisdiction to consider about any appointment of any trustees to the temples as against the established and immemorial custom prevailing in the temples. The 2nd defendant has got no jurisdiction to appoint any trustee for the temples of the above nature which are denominational in character. Hence the suit.

5. Written statement of the first defendant adopted by the second defendant reads as follows:-

It is true that the second defendant issued a notice to one Seetharama Chetty under Section 49 of the H.R. & C.E. Act and about the nomination of trustees. The Inspector of H.R. & C.E. made enquiries and obtained statements from the said Seetharama Chetty and only thereupon the provision of Section 49 of the Act has been invoked. It is misconceived to avert that the suit temples fall under the category of denominational in character and that this defendant is not entitled to invoke the provisions of the H.R.& C.E. Act. As per the information gathered by the Inspector, H.R. & C.E., Kancheepuram, one Mr.Seetharama Chetty was looking into the affairs of the suit temples. He had been collecting income from the lands endowed for the suit temples and was also utilising such income for the maintenance of the suit temples. When the accounts were demanded by the Inspector, H.R. & C.E., Kancheepuram, no satisfactory explanation has been placed by the said Seetharama chetty or by the community.

6. Article 26 of the Constitution, no doubt, gives right to a religious denomination or any section thereof to establish and maintain an institution for religious and charitable purposes and to manage its affairs. That does not mean that such denomination could administer such institutions without any statutory control being exercised by the authorities constituted under the Tamil Nadu H.R. & C.E. Act, 1959. If a religious institution founded by a religious denomination becomes a place of public religious worship, then it comes within the purview of the H.R. & C.E. Act. Any religious institution where there is public religious worship by dedication or as of right without any restrictions attracts the provisions of the H.R. & C.E. Act, 1959 and nothing done under this Act in respect of such public institution can be questioned as unconstitutional. The Act itself makes valid provision for regulating the administration for such institutions. If a temple in which a religious denomination has interest becomes a place of public religious worship, then it attracts the provisions of the H.R. & C.E. Act.

7. There is no provision in the Tamil Nadu H. R. & C.E. Act classifying a temple as "denominational temple" and there is no provision in the Act exempting from the operation of the Act wherein religious denominations have interest. If the plaintiff's claim the temple as a private temple and not as a place of public religious worship, the remedy

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lies before the Deputy Commissioner under Section 63(a) of the Tamil Nadu H.R. & C.E. Act 1959 (Act 22 of 1959) and the suit is barred in view of the provision in Section 108 of the Act. If on the other hand, the suit is intended to protect the interests of the Religious denomination, the plaintiff could invoke the provision of Section 51 to safeguard their interest if any. They can also invoke Section 64(1) by moving the Deputy Commissioner for framing a suitable scheme with provision to safeguard the right, if any, of the Religious Denomination for whose benefit the institution is chiefly intended or maintained. If there is worship by the Hindu Public in a temple in which religious denomination has interest, then it becomes a "temple" as defined in Section 6(20) of the H.R. & C.E. Act, 1959 i.e. a place of public religious worship attracting the provisions of the H.R. & C.E. Act. Therefore, the suit is liable to be dismissed.

8. Written statement filed by the third defendant rewads as follows:-

The plaintiff is not the elected trustee of five temples. No records have been filed to substantiate this contention. The account books filed in O.S.No. 26 of 1983 will clearly go to show that there are contributions from the outsiders, villagers etc., for the construction and the maintenance of the temples. It would also clearly go to show that the entire villagers and outsiders have contributed for the temple festivals. The present suit is misconceived and there is no merit and therefore, the suit is liable to be dismissed.

9. Written statement filed by the 7th defendant adopted by D8 and D10 reads as follows:-

The suit temples are not a common village temples. It belongs to Balijakula community of Kavarai Street, Muthialpettai Village. The other street people viz., Seniar Street, Keel Street and Mettu Street people have absolutely no right whatsoever in the suit temples. They have no right to claim as trustees. The suit temple exclusively belongs to Balijakula community. Therefore, this defendant has no objection for the suit being decreed as prayed for.

10. The plaintiff was examined as P.W.1. Tvl.Somasundaram, Venkatesan Chettiar, Srinivasa Raghavan were examined as P.Ws. 2 to 4. Exs. A1 to A45 have been marked on the side of the plaintiff to prove the claim of the plaintiff. Tvl. Srinivasan, Venugopal, Supramaniam, Ramaiya Chettiar and Duraisamy were examined as D.Ws.1 to 5. Exs. B1 to B5 were marked on the side of the defendants to confront the claim of the plaintiff. Commissioner's report has been marked as Ex.C1. The lower court after analysing the evidence found that the plaintiff is entitled to get the relief and decreed the suit accordingly. The present appeal has been filed by D1 and D2 against such finding.

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11. Heard Mr. R. Murugesan, Special Public Prosecutor appearing for the plaintiff. No one present on behalf of the respondents.

12. Upon hearing the arguments of the learned counsel for the appellants, the points for determination are :-

(i)Whether the suit temples along with their properties belong to Balijakula community people?

(ii) Whether the present suit is barred under Section 63 (a) of Tamil Nadu Hindu Religious Endowments Act 1959?

13. POINT No.1.:- The suit is filed by one M.P.Radhakrishnan as the representative of the members of the Balijakula community of Kavarai Street, Muthialpettai Village. The said person claims himself as elected trustee of the suit temples and seeks for a declaration that the order dated 8.2.1980 in Na.Ka.No.131/80 issued by the H.R. & C.E. Department as illegal and not binding on the plaintiff. The defendants 1 and 2 confronted the claim of the plaintiff stating that the suit temples are not belonged to Balijakula community and that they are public temples and therefore, the plaintiff is not entitled for any declaration as prayed for.

14. I have gone through the exhibits filed in this case. The documents filed in this case would go to show that the consecration of the temple is out of the funds collected from the public. The temples are being maintained out of the funds collected from hundial. Exs.A3 to A9 are the Kumbabisheka invitation and account books. The evidence let in on behalf of the plaintiff and the defendants would go to show that the temple is being maintained out of the public funds. There is nothing on record to show that the temple is being maintained out of the funds collected exclusively from the community viz., Balijakula community. The third defendant also filed a written statement to the fact that the affairs of the temples were met out of the public money. The plaintiff has not proved that the temples are maintained from the funds collected exclusively from the people of Balijakula community. So far, the Plaintiff has not obtained any order, from the competent authority stating that the suit temples are being maintained exclusively by the Balijakula community people, to treat it as a private temple. Further there is nothing on record to show that except Balijakula community people, no other person has got right of access to the suit temples. The fact that the installation of hundial and collection of funds through hundial would prove that the suit temples are not exclusively maintained by the Balijakula community but the same are maintained and festivals are performed out of the public funds. In such view of the fact, it cannot be stated that the suit temples are owned exclusively by the Balijakula community. The lower Court has not appreciated the evidence on record in right perspective and ultimately rendered a wrong finding to the fact that the suit temples belong to Balijakula community exclusively. Such a finding is contrary to fact as the temples are maintained out of the funds collected from the public including from the people belonged to Balijakula

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community. In such view of the fact, the finding of the lower Court with regard to this point is liable to be set aside and accordingly set aside.

15. POINT No. 2:- It is the specific case of the appellants that the present suit is barred under Section 63(a) of the Tamil Nadu Hindu Religious and Charitable Endowments Act 1959. The learned counsel for the appellants further submitted that the plaintiff can also invoke Section 64(1) by approaching the Deputy Commissioner for framing suitable scheme with provision to safeguard the right, if any, of the Religious Denomination for whose benefit the institution is chiefly intended or maintained. Section 63 (a) of the Act reads as follows:-

> 63. (Joint Commissioner or Deputy Commissioner) to decide certain disputes and matters:-
>
> "subject to the rights of suit or appeal hereinafter provided, (the Joint Commissioner or the Deputy Commissioner, as the case may be), shall have power to inquire into and decide the following disputes and matters:-
>
> (a) whether an institution is a religious institution;"

The facts available on record would show that the suit temples are not a private temples. The suit temples are being maintained from the income collected from the public. The people belonging to the Balijakula community have also contributed substantial funds for the maintenance of the suit temples. That does not mean that the Balijakula community people have exclusive right and control over the suit temples as the same are being maintained out of the funds contributed by the other people also.

16. Section 64 (1) of the H.R. & C.E. Act reads as follows:-

> " Power of (Joint Commissioner or Deputy Commissioner) to settle schemes:-
>
> (i) When the Joint Commissioner or the Deputy Commissioner, as the case may be, has reason to believe that in the interest of the proper administration of an institution, a scheme should be settled for the institution, or when not less than five persons having interest make an application, in writing, stating that in the interest of the proper administration of an institution a scheme should be settled for it, the Joint Commissioner or the Deputy Commissioner, as the case may be, shall consult in the prescribed manner the trustee and the persons having interest and if, after such consultation, he is satisfied that it is necessary or desirable to do so, he shall, by order, settle a scheme of administration for the institution".

17. If the plaintiff has got any grievance, for the maintenance of the suit temples, it is for him to move before the appropriate forum to seek his redress and not come to this Court for any relief. The Assistant Commissioner of H.R. & C.E., Kancheepuram, only after making preliminary enquiry issued the suit notice for appointment of trustees for the

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maintenance of the suit temples. The said Order is marked as Ex.A.37. Since the suit temples are public temples, the appellants have got every right to issue notice under Section 49 of the H.R. & C.E.Act for taking necessary action for the maintenance of the suit temples under the said Act. Issuance of the suit notice cannot be stated to be illegal and not binding on the plaintiff. The lower Court without appreciating the documents viz., Exs. A3 to A9, has wrongly rendered a finding that the suit temples are being maintained exclusively by the Balijakula community people resulting to miscarriage of justice and such a finding cannot be sustained. Therefore, the finding of the lower Court in this regard is liable to be set aside and accordingly set aside. In such view of the fact, I am satisfied that the suit is barred under Section 63(a) of the Act. This issue is also answered against the plaintiff.

18. In the result, this appeal is allowed and the judgment and decree of the lower Court dated 24.8.1989, made in O.S.No. 196 of 1980 is set aside and accordingly the suit is dismissed. The parties are directed to bear there own costs.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

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To
1. The Subordinate Judge,
Kancheepuram.

2. The Record Keeper, VR Section, High Court, Madras.

+ 1 CC to the Spl. Government Pleader SR NO 1523

A.S.No. 618 of 1990

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